

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7867 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SASHIKANT B BHAVSAR

Versus

AMBALAL SARABHAI ENTERPRISE

Appearance:

1. Special Civil Application No. 7867 of 2004
MRS SANGEETA N PAHWA for Petitioner No. 1
NANAVATI ASSOCIATES for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. Rule. Mr.Nanavati, learned counsel for the respondent waives service of rule.

2. Mrs.Sangeeta N.Pahwa, learned advocate for the petitioner assailed the order passed below Exh.271 in Reference (IT) No.102/1996 on 17th January 2004, whereby the learned Member of the Industrial Tribunal, Baroda is pleased to held that, the petitioner Sashikant B.Bhavsar was not in service at the relevant time and that, he was surplus. Learned advocate for the petitioner submitted that, the Tribunal has committed an error in recording the aforesaid finding on the ground that, the Identity Card, which was issued to the petitioner-workman was not genuine (original). Learned advocate also submitted that, coupled with the notice dated 18th March 1988, two lists of, 'surplus workers' and 'the workers, who were in service' were notified; there were discrepancies in those lists; the case of the petitioner-workman is that, though he was in service, his name was not included in the list of 'workmen in service.' Last, but not the least, the learned advocate submitted that, the petitioner-workman conducted the proceedings of (application Exh.271) party in person, before the Industrial Tribunal Baroda, as the learned advocate, engaged by him did not remain present. He, therefore, could not produce all relevant material and could not raise all possible contentions. The learned advocate requested that, therefore, in the interest of justice, the petitioner-workman be granted a chance to produce all relevant material and raise all possible contentions to establish his right before the Hon'ble Industrial Tribunal.

3. Heard Mr.Nanavati, learned counsel for the respondent company. Mr.Nanavati submitted that, this, infact, was the second round for the petitioner-workman, pursuant to the order passed by this Court in Special Civil Application No.5305/2003. Therefore, there is no need to give any fresh opportunity to the petitioner-workman. Mr.Nanavati could not convince this Court on the point that, any prejudice will be caused to the respondent company, if this fresh opportunity is given to the petitioner-workman. More so, when he had to conduct the matter, party in person, even after engaging an advocate, who did not remain present. His case is that, he could not produce all relevant material and could not raise all possible contentions. In view of that, without examining the matter in detail, the present petition is allowed only on this limited ground. Order below Exh.271 is quashed and set aside. The matter is remanded to the Industrial Tribunal to decide afresh, after giving full opportunity to both the sides. The Hon'ble Industrial Tribunal shall give priority to the hearing of the matter and shall decide the same as early

as possible, but not later than 30th April 2005. Rule is made absolute to the aforesaid extent only with no order as to costs.

(Ravi R.Tripathi, J.)

*Shitole